



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

September 4, 2003

Mr. Brad Norton
Assistant City Attorney
City of Austin - Law Department
P.O. Box 1088
Austin, Texas 78767-8845

OR2003-6216

Dear Mr. Norton:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 187137.

The Austin Police Department (the "department") received a request for information relating to the polygraph examination administered to the requestor, a former officer of the department, on February 8, 2003, pursuant to internal affairs investigation number 02-331. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

As a preliminary matter, we note that the requestor's original written request for information, as well as the comments the requestor subsequently submitted to this office, specifically indicate that the requestor is only seeking "records or documents directly associated with the polygraph exam" in question, and not the entire internal affairs investigation file. Accordingly, this ruling only addresses the availability to the requestor of the polygraph examination records specifically referenced in the request. We determine that the internal affairs investigation records you have submitted, with the exception of a small amount of information directly pertaining to the polygraph exam at issue, are not responsive to the present request and need not be released.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information made confidential by other statutes. Section 1703.306 of the Occupations Code governs access to information obtained during the course of a polygraph examination and provides in pertinent part:

(a) A polygraph examiner, trainee, or employee of a polygraph examiner, or a person for whom a polygraph examination is conducted or an employee of the person, may not disclose information acquired from a polygraph examination to another person other than:

(1) the examinee or any other person specifically designated in writing by the examinee[.]

Occ. Code § 1703.306. Here, the requestor is the examinee. Section 1703.306(a)(1) expressly provides an examinee with access to information acquired from a polygraph examination. *See id.* Accordingly, the requestor in this case has a specific right of access to the requested polygraph information pursuant to section 1703.306(a)(1) of the Occupations Code.

We note your contention that the information at issue is made confidential by section 143.089(g) of the Local Government Code and is therefore excepted from disclosure under section 552.101. *See* Local Gov't Code § 143.089(g). In general, information that reasonably relates to an officer's employment relationship with the police department and that is maintained in a police department's internal file pursuant to section 143.089(g) is confidential. *City of San Antonio v. San Antonio Express-News*, 47 S.W.3d 556 (Tex. App.—San Antonio 2000, pet. denied); *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

We note that where information falls within both a general and a specific statutory provision, the specific provision prevails over the general. *See Cuellar v. State*, 521 S.W.2d 277 (Tex.Crim.App.1975) (under well-established rule of statutory construction, specific statutory provisions prevail over general ones); Open Records Decision Nos. 598 (1991), 583 (1990), 451 (1986). We find that the access provision for an examinee in section 1703.306(a)(1) is more specific than the general confidentiality provision in section 143.089(g). Furthermore, section 1703.306 of the Occupations Code was enacted after the

enactment of chapter 143 of the Local Government Code.¹ Where two statutory provisions conflict, the statute latest in date of enactment prevails. *See* Gov't Code § 311.025(a). Thus, to the extent the provisions of section 1703.306 of the Occupations Code conflict with the provisions of section 143.089 of the Local Government Code, the later-enacted section 1703.306 prevails. Thus, the information at issue may not be withheld pursuant to section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code.

You also raise section 552.108 of the Government Code. Section 552.108(a) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." As noted, however, the requestor has an express statutory right of access to the polygraph information at issue. When a statute affirmatively requires the release of information, the information generally cannot be withheld from disclosure pursuant to one of the exceptions in Subchapter C of chapter 552 of the Government Code. *See, e.g.,* Open Records Decision No. 451 (1986) (specific statute that affirmatively requires release of information prevails over discretionary exception of Act). In this instance, because the requestor has an express statutory right of access to the polygraph information at issue, the department may not withhold the information pursuant to section 552.108 of the Government Code. We therefore determine that the department must release the submitted information pertaining to the polygraph examination at issue, which we have marked, to the requestor.

We note that the submitted videotape also pertains to the polygraph examination at issue. Thus, the department must release the videotape to the requestor pursuant to section 1703.306(a)(1) of the Government Code.

In summary, we have marked the information in the submitted documents that must be released to the requestor pursuant to section 1703.306(a)(1) of the Government Code. The submitted videotape must also be released to the requestor pursuant to section 1703.306(a)(1). The remainder of the submitted information is not responsive to the present

¹*See* Act of May 28, 1999, 76th Leg., R.S., ch. 388, § 1, 1999 Tex. Gen. Laws 1431, 2267 (enacting Occ. Code § 1703.306); Act of March 1, 1989, 71st Leg., R.S., ch. 1, § 25(c), 1989 Tex. Gen. Laws 1, 31 (enacting statutory predecessor to Local Gov't Code § 143.089).

request and need not be released. Based on this finding, we do not address your other arguments against disclosure.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

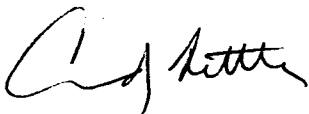
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/jh

Ref: ID# 187137

Enc: Submitted documents

c: Mr. Noel Shelton
1227 Wisterwood Drive
Houston, Texas 77043
(w/o enclosures)